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U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [redacted] Office: New York Date: FEB 05 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431

IN BEHALF OF APPLICANT:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant was born on January 20, 1983, in Jamaica. The applicant's father, [redacted] was born in Jamaica in 1964 and never had a claim to U.S. citizenship. The applicant's mother, [redacted] was born in Jamaica in December 1959 and became a naturalized U.S. citizen on January 21, 2000. The applicant's natural parents never married each other. The applicant was lawfully admitted for permanent residence on May 7, 1987. The applicant is seeking a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director reviewed the record and concluded that the applicant was over the age of 18 and ineligible for the benefit sought.

On appeal, counsel states that the district director erred in concluding that the applicant is ineligible under the Child Citizenship Act of 2000 (CCA). Counsel states that a written brief will be submitted within 60 days. More than 60 days have elapsed since the appeal was filed on June 29, 2001, and no additional documentation has been received. Therefore, a decision will be entered based on the present record.

Sections 320 and 322 of the Act were amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who had not yet reached their 18th birthday as of February 27, 2001. The applicant was 18 years and 1 month old on February 27, 2001. Therefore, he is not eligible for the benefits of the CCA.

Former section 320 of the Act prior to its amendment provided that:

> (a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such parent is naturalized, become a citizen of the United States, when
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> > (1) such naturalization takes place while such child is under the age of 18 years; and
> >
> > (2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of 18 years.
>
> (b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United

[redacted]

> States at the time of naturalization of such adoptive parent, in the custody of his adoptive parents, pursuant to a lawful admission for permanent residence.

The applicant does not qualify for consideration under former section 320 of the Act because neither of his parents was a U.S. citizen at the time of his birth.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has failed to meet that burden. Therefore, the appeal will be dismissed.

This decision is without prejudice to the applicant's seeking U.S. citizenship through normal naturalization procedures by filing an Application for Naturalization on Form N-400 with a Service office having jurisdiction over his place of residence.

ORDER: The appeal is dismissed.